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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 605

RAYMOND H. PETERSON, *Petitioner*

v.

UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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November 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OPINION BELOW

The opinion delivered on June 13, 1963, in the Court of Appeals for the District of Columbia Circuit reversed a judgment of the District Court granting petitioner summary judgment in his claim for restoration to his former position in the Department of the Air Force. The opinion is included in the record.

JURISDICTION

By order of the Chief Justice, dated September 6, 1963, the time to file a petition for a writ of certiorari was extended to and including November 4, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner's suit for restoration to his former civil service position in the Department of the Air Force was barred by laches.

STATEMENT OF THE CASE

The petitioner has been a federal civil service employee since 1940. In 1957, when he was 61 years old, and serving as a production specialist in the Air Force in Chicago his supervisor was ordered to remove or force the resignation of all the older specialists on his staff. Pursuant to this order, the petitioner was subsequently for the first time charged with failure to comply with Air Force regulations relating to the reporting of delinquent contracts, and an action instituted against him to remove him for bad conduct in failing to report such delinquency. Since the petitioner was scheduled to receive a good efficiency rating while this action was pending, his rating due on May 15, 1957 was held up in violation of the Performance Rating Act of 1950. After going through the motion of granting him a hearing, petitioner was removed from his GS 9 job paying approximately $6,250 per annum. In apparent recognition of the inequity of their action, and to forestall possible public indignation if it became revealed, and to confuse the petitioner in the pursuit of his remedy, the Air Force deliberately

failed to notify the old man that he could appeal to the Civil Service Commission, and offered him a carrot, in the form of a GS 4 job, paying $3,925, also to keep him from starving since at that time he was not eligible for retirement. Faced with Hobson's choice, petitioner accepted the lower paying job in September, 1957.

Immediately after the initial shock of the cruel and unjust action of the Air Force had worn off, petitioner initiated unceasing efforts to be restored to his old job. His efforts are described in detail in his affidavit set forth at J.A. 29-36. Finally, when it became clear that he would not obtain restoration otherwise, a suit was filed in the District Court for the District of Columbia in September 1961. In May, 1962, the Government moved for summary judgment asserting three grounds therefor: 1) that petitioner had failed to exhaust his administrative remedy; 2) that the relief sought was barred by laches; and 3) that the administrative action had complied with all procedural requirements. After the submission of pleadings in support of the motion, and oral argument, the motion was denied. Subsequently, petitioner filed a motion for summary judgment. This was heard by another judge. The same arguments were advanced by the Government and rejected by the judge who granted the motion. (The Joint Appendix contains all the pleadings in the lower court.)

Upon appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the action of the lower court and remanded the action. The single basis assigned for the reversal was that the suit was barred by laches. The Court cited as its au-

thority, its own earlier decision in *Jones* v. *Summerfield*, 105 U.S. App. D.C. 140, 265 F. 2d 124, cert. denied, 361 U.S. 841. Upon remand, in accordance with the opinion above, the District Court dismissed the suit.

REASONS FOR GRANTING THE WRIT

This case poses issues of substantial legal importance to over 2,500,000 Federal employees. Since the decision was handed down in 1919 in *U.S. ex rel. Arant* v. *Lane*, 249 U.S. 367, a everhigher barrier has been erected which prevents Federal employees from having their claims to restoration to jobs adjudicated on their merits. Instead, an artificial statute of limitations has been erected by the courts without legislative sanction or mandate. While giving lip service to the accepted equitable principles that underline the doctrine of laches, in practice, the courts have ignored the equities involved and have proceeded to dismiss suits on the most tenuous of legalistic reasons. Since 1919, the number of Federal civil service employees has increased manifold. The importance of reexamining the question has, as a consequence, become that much more urgent. Every effort should be made by this court to protect the rights of Federal employees against the Goliath of monolithic bureaucracy.

The legal principles underlying laches are beyond controversy. There must be unreasonable delay; and there must be resulting prejudice. "Unreasonable" should not be given a narrow construction by the courts. In cases involving Federal employees there is a tendency to discard reasons given for delay in filing suit on the most trivial bases. For example, in the *Jones* case, the explanation for the delay in filing the

suit for 33 months was apparently rejected because the "allegations are unsupported by the pleadings or by affidavits". Yet this is a case which requires a balancing of the equities of the contending parties and certainly the weaker party seeking relief should have the benefit of any doubt.

The defendant raising the doctrine of laches has always been required to show that there has been resulting prejudice. In cases involving the Government, however, there has been a marked tendency to accept a priori without the requirement of sustaining proof, that any delay results in prejudice. No more than a showing that the job has been filled by another has been accepted as sufficient to show prejudice. Yet any delay whatsoever would permit the raising of the contention that the job had already been filled and the new employee would be prejudiced if the old employee were restored to his old job. The Government also customarily raises the argument that restoration will cost money for duplicate salaries in some cases. The courts should examine critically and reject this argument since the wrong which resulted in the damage arises from the action of the Government and it should be made to pay for it. Under its equity powers, in some cases, the court might order that money damages not be payable. In the instant case, there is no claim for money damages.

This case is one peculiarly meriting review. Two different judges in the District Court have already considered arguments on the merits and independently concluded that the petitioner is entitled to restoration.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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